

1 Nico Banks, Esq.
2 nico@bankslawoffice.com
3 Filing on behalf of all Plaintiffs
4 CA Bar No. 344705
5 Banks Law Office
6 712 H St NE,
7 Unit #8571,
8 Washington, DC 20002
9 Tel.: 971-678-0036

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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

DAVID HOUGH; *et al.*

Plaintiffs,

vs.

RYAN CARROLL; *et al.*

Defendants.

) Case No.: 2:24-cv-02886-WLH

) **PLAINTIFFS' OPPOSITION TO**
) **ORIGINAL DEFENDANTS'**
) **MOTION TO DISMISS**

) Presiding Judge: Hon. Wesley L. Hsu

) Hearing: November 15, 2024, 1:30 pm

) Trial Date: N/A
)

**PLAINTIFFS' OPPOSITION TO ORIGINAL DEFENDANTS' MOTION TO
DISMISS**

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1 Plaintiffs¹ submit this Opposition to the Original Defendants’² (hereinafter,
2 “Defendants”) Motion to Dismiss (hereinafter, the “Motion”):
3

4 **PRELIMINARY NOTE**

5 The parties have stipulated to continue the hearing regarding this Motion, and
6 the parties understand that this motion will likely be moot once Plaintiffs file their
7 Second Amended Complaint. Because the stipulation was filed shortly before the
8 deadline to file this opposition brief, however, Plaintiffs are filing this opposition brief
9 out of an abundance of caution.
10
11

12 **SUMMARY**

13 Defendants’ motion to dismiss for lack of personal jurisdiction fails because
14 Defendants failed to address the numerous allegations in the Amended Complaint
15 connecting Defendants to California. In particular, Plaintiffs allege that the Human
16 Defendants³ and the Wealth Assistants Entity Defendants⁴ intentionally defrauded
17 many California residents—including Plaintiffs—and collected more than \$1,000,000
18 from those residents as part of the fraudulent scheme.
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23 ¹ This matter has been stayed with respect to Plaintiffs who signed the so-called Texas arbitration clause, as to those
24 Plaintiffs’ claims against . Although there is some confusion about which Plaintiffs signed which arbitration clauses, it
25 appears that the Plaintiffs who signed the Texas arbitration clauses are Isabel Ramos, Anthony Ramos, and Amund
26 Thompson.

27 ² The Original Defendants are Ryan Carroll; Max K. Day; Max O. Day; Michael Day; Yax Ecommerce LLC; Precision
28 Trading Group, LLC; WA Distribution LLC; Providence Oak Properties, LLC; WA Amazon Seller LLC; MKD
Investment Advisor, LLC; MKD Family Beneficiary, LLC; MKD Family Private Management Company, LLC; Max
Day Consulting, LLC; Houtex Farm Equity Partners LLC; Business Financial Solutions Advisory LLC; Evo Maxx
LLC; Yax IP and Management Inc. d/b/a “Fulfillable”; WWKB LLC; and Dreams To Reality LLC.

³ The Human Defendants are Ryan Carroll, Max K. Day, Max O. Day, and Michael Day.

⁴ The Wealth Assistants Entity Defendants are Yax Ecommerce LLC; Precision Trading Group, LLC; WA Distribution
LLC; Providence Oak Properties, LLC; and WA Amazon Seller LLC.

1 In an earlier order issuing a preliminary injunction, the Court preliminarily found
2 that it likely lacked personal jurisdiction over the Alter Ego Defendants⁵ and all of the
3 Wealth Assistants Entity Defendants except Yax Ecommerce LLC. Subsequently,
4 however, Plaintiffs amended their complaint to clarify that the Court has personal
5 jurisdiction over all of the Alter Ego Defendants because they are the Human
6 Defendants' alter egos, and the Court has personal jurisdiction over the Wealth
7 Assistants Entity Defendants because they are Yax Ecommerce LLC's alter egos.
8

9 Furthermore, Defendants' motion to dismiss for failure to state a claim fails with
10 respect to all claims because the motion ignores the vast majority of Plaintiffs' factual
11 allegations, which plausibly allege that the Human Defendants and Wealth Assistants
12 defrauded Plaintiffs. The Alter Ego Defendants are also liable by pursuant to the
13 corporate veil piercing doctrine.
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16 ARGUMENT

17 A. The Court Has Specific Personal Jurisdiction Over All Defendants

18 i. Courts Have Personal Jurisdiction Over Defendants That 19 Perpetrate Intentional Torts Knowing The Impact Will Be Felt 20 In The Forum State 21

22 In adjudicating a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(2), for lack
23 of personal jurisdiction, a court must take as true all uncontroverted allegations in the
24 Amended Complaint and resolve all genuine disputes in the plaintiff's favor. *LNS*
25

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28 ⁵ The Alter Ego Defendants are MKD Investment Advisor, LLC; MKD Family Beneficiary, LLC; MKD Family Private Management Company, LLC; Max Day Consulting, LLC; HouTex Farm Equity Partners LLC; Business Financial Solutions Advisory, LLC; EvoMaxx, LLC; Dreams to Reality, LLC; and WWKB, LLC.

1 *Enters. v. Cont'l Motors, Inc.*, 22 F.4th 852, 858 (9th Cir. 2022). If both sides submit
2 affidavits, then conflicts between the parties over statements contained in affidavits
3 must be resolved in the plaintiff's favor. *LNS Enters. v. Cont'l Motors, Inc.*, 22 F.4th
4 852, 858 (9th Cir. 2022).

5
6 Fed. R. Civ. P. 4(k)(1)(a) provides that a federal court has personal jurisdiction
7 over a party whenever a state court in the state where the federal court is located would
8 have personal jurisdiction over that party. California courts, in turn, may exercise
9 jurisdiction on any basis consistent with the Constitution of California and the United
10 States. Cal. Code Civ. Proc. § 410.10. The exercise of jurisdiction over a nonresident
11 defendant comports with these Constitutions if the defendant has such minimum
12 contacts with the state that the assertion of jurisdiction does not violate traditional
13 notions of fair play and substantial justice. *Snowney v. Harrah's Entertainment, Inc.*,
14 35 Cal.4th 1054, 1061 (Cal. 2005).

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18 Courts use the following three-part test to analyze whether a party's "minimum
19 contacts" meet the due process standard for the exercise of specific personal
20 jurisdiction: (1) The non-resident defendant must purposefully direct his activities or
21 consummate some transaction with the forum or resident thereof; or perform some act
22 by which he purposefully avails himself of the privilege of conducting activities in the
23 forum, thereby invoking the benefits and protections of its laws (the "purposeful
24 direction or availment requirement"); (2) the claim must be one which arises out of or
25 relates to the defendant's forum-related activities; and (3) the exercise of jurisdiction
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1 must comport with fair play and substantial justice, *i.e.* it must be reasonable. *Learjet,*
2 *Inc. v. Oneok, Inc.*, 715 F.3d 716, 741-42 (9th Cir. 2013).

3 “[T]he purposeful direction or availment requirement for specific jurisdiction is
4 analyzed in intentional tort cases under the ‘effects’ test” that is derived from *Calder*
5 *v. Jones*, 465 U.S. 783, (1984). *Dole Food Co. v. Watts*, 303 F.3d 1104, 1111 (9th Cir.
6 2002). That test has three requirements: the defendant allegedly must have (1)
7 committed an intentional act, (2) expressly aimed at the forum state, (3) causing harm
8 that the defendant knows is likely to be suffered in the forum state. *Yahoo! Inc. v. La*
9 *Ligue Contre Le Racisme et L'Antisemitisme*, 433 F.3d 1199, 1206 (9th Cir. 2006).

10 Notably, with respect to the third prong (“causing harm...”), some district courts
11 in the Ninth Circuit used to apply a rule that the “*brunt* of the harm which is suffered”
12 from the defendant’s conduct must have been suffered in the forum state. *Id.* (emphasis
13 added) (citing *Core-Vent Corp. v. Nobel Indus. AB*, 11 F.3d 1482 (9th Cir. 1993)).
14 However, the Ninth Circuit expressly rejected that test and held that “[i]f a
15 jurisdictionally sufficient amount of harm is suffered in the forum state, it does not
16 matter that even more harm might have been suffered in another state.” *Id.* at 1207. For
17 example, online sales to California residents totaling \$325,000 easily satisfy that
18 “jurisdictionally sufficient amount of harm” requirement, even if the non-resident
19 defendant sells nationwide and has no additional contact with California. *Thurston v.*
20 *Fairfield Collectibles of Ga., LLC*, 53 Cal.App.5th 1231, 1240 (Cal. Ct. App. 2020).

1 “[P]urposeful availment is satisfied even by a defendant ‘whose only ‘contact’
2 with the forum state is the ‘purposeful direction’ of a foreign act having effect in the
3 forum state.’” *Dole*, 303 F.3d at 1111 (quoting *Haisten v. Grass Valley Med.*
4 *Reimbursement Fund*, 784 F.2d 1392, 1397 (9th Cir. 1986)); *Brainerd v. Governors of*
5 *the Univ. of Alta.*, 873 F.2d 1257, 1260 (9th Cir. 1989) (noting that it is easier for a
6 plaintiff to meet the purposeful direction or availment requirement in a case involving
7 an intentional tort than in a case involving negligence because in intentional-tort cases
8 the “acts are performed for the very purpose of having their consequences felt in the
9 forum state.”); *Columbia Pictures Television v. Krypton Broadcasting of Birmingham,*
10 *Inc.*, 106 F.3d 284, 289 (9th Cir. 1997) (finding personal jurisdiction over defendant
11 Feltner where plaintiff Columbia alleged that Feltner, the owner of television stations
12 in the southeast that continued to broadcast Columbia-licensed shows after failing to
13 pay that company royalties; the fact that Feltner *knew* the impact of his willful violation
14 would be felt in California was “sufficient to satisfy the ‘purposeful availment’
15 requirement.”).

21 **ii. The Wealth Assistants Entity Defendants And Human**
22 **Defendants Intentionally Defrauded California Residents**

23 In this case, Plaintiffs allege that the Wealth Assistants Entity Defendants⁶
24 intentionally defrauded many California residents and collected more than \$1,000,000
25 from those residents as part of the fraudulent scheme. (ECF 56 at ¶ 3). Because
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28 ⁶ The Wealth Assistants Entity Defendants are Yax Ecommerce LLC; Precision Trading Group, LLC; WA Distribution LLC; Providence Oak Properties, LLC; WA Amazon Seller LLC; and Yax IP and Management Inc. (ECF 56, p. 3).

1 Defendants have not submitted any evidence to the contrary, the Wealth Assistants
2 Entity Defendants are subject to the Court's personal jurisdiction. *See LNS Enters.*, 22
3 F.4th at 858 (holding that a court must take as true all uncontroverted allegations in the
4 complaint).

5
6 Defendants implicitly take the position that Wealth Assistants' operations were
7 only attributable to Yax Ecommerce LLC and not the other Wealth Assistants Entity
8 Defendants. (ECF 93, ¶ 20). However, Defendants do not explain that position, and it
9 is contradicted by Plaintiffs' allegations (ECF 56, ¶ 36-41), contradicted by the
10 evidence in the record (ECF 9 (hereinafter, "Motion for TRO")),⁷ and not supported
11 by any affirmative evidence.⁸

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14 Moreover, Plaintiffs' uncontradicted allegations show that Ryan Carroll, Max K.
15 Day, Max O. Day,⁹ and Michael Day all directed Wealth Assistants' fraudulent conduct
16 aimed at intentionally defrauding Plaintiffs. (ECF 56, ¶ 4, stating that the Human
17 Defendants were "intentionally defrauding dozens of California residents out of more
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21 ⁷ The evidence shows that "Precision Trading Group, LLC" did business as "Wealth Assistants LLC," "WA
22 Distribution, LLC," "WA Amazon Seller, LLC," which shows the interchangeability of those four entities. (Motion for
23 TRO at Ex. A, Ex. 2). The evidence also shows that Yax IP and Management is an alter ego of Wealth Assistants
24 because (1) it has the same law firm of record (Mac Leckrone) as many of the Defendant entities; (2) it also has the
25 same registered agent ("Cogency Global Inc.") as many of the defendant entities; (3) its name's prefix ("Yax") matches
26 the prefix of "Yax Ecommerce"; and (4) a press release indicates that "Max Day" is the "CEO of Fulfillable." (Motion
27 for TRO at Ex. A, Ex. 6, 16).

28 ⁸ Even if Wealth Assistants' operations were not directly attributable to all of the Wealth Assistants entities, the entities
would still be subject to the Court's personal jurisdiction because Plaintiffs allege that they are Wealth Assistants' alter
egos (ECF 56, ¶¶ 36-41), and that they participated in the conspiracy by helping the other Defendants conceal assets
(*Id.*). The law regarding personal jurisdiction for alter egos and conspiracy participants is discussed in the sections that
follow.

⁹ Max O. Day has resubmitted an affidavit in which he asserts that he was merely an independent contractor of Wealth
Assistants and not a central figure in the conspiracy. However, the Court has already found that affidavit was not
credible. (ECF 49 at p. 5).

1 than \$1,000,000”).¹⁰ The Court has already found that Plaintiffs set forth evidence
2 sufficient to subject Ryan Carroll, Max K. Day, Max O. Day, and Michael Day to the
3 Court’s personal jurisdiction at the preliminary injunction stage because those
4 Defendants orchestrated the conspiracy to defraud California residents. (ECF 49 at 4-
5 5). Because Defendants have submitted no additional evidence, there would be no
6 justification for disrupting that finding.
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8
9 Plaintiffs also allege that the Human Defendants’ scheme to fraudulently transfer
10 and conceal the stolen money was centered in California because the people
11 responsible for transferring and concealing the money—Christine Carroll, Rey
12 Passinli, and Total Apps—were all residing in and doing business in California. (ECF
13 56 at ¶ 5). There should be no doubt that the Court has personal jurisdiction over the
14 Human Defendants on the grounds that they directed acts in California to help
15 themselves steal more than \$1,000,000 of California residents’ money.
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18 **iii. The Court Also Has Personal Jurisdiction Over Alter-Ego**
19 **Defendants**

20 A person’s alter ego is subject to personal jurisdiction wherever the person is
21 subject to personal jurisdiction. *See Sheard v. Superior Court*, 40 Cal.App.3d 207, 210,
22 114 Cal. Rptr. 743 (1974). Whether a person has an “alter ego” is determined by
23 applying the corporate-veil-piercing doctrine. “A corporate identity may be
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27 ¹⁰ Many more uncontradicted allegations support the finding that Ryan Carroll, Max K. Day, Max O. Day, and Michael
28 Day orchestrated the conspiracy that intentionally defrauded California residents. For example, those four individuals
were the sole members of the limited liability companies that perpetrated that fraud. (ECF 56, ¶¶ 36-41). Moreover,
each of those individuals performed important substantive work to orchestrate that fraud, and subsequently fraudulently
transfer the assets to themselves and conceal those assets. (ECF 56, ¶¶ 166-169).

1 disregarded—the ‘corporate veil’ pierced—where an abuse of the corporate privilege
2 justifies holding the [owner] of a corporation liable for the acts of the corporation.”
3 *Sonora Diamond Corp. v. Super. Ct.*, 83 Cal.App.4th 523, 538 (2000). Although there
4 is a presumption against disregarding a corporate identity, that presumption may be
5 overcome by showing that (1) there is such unity of interest that the separate
6 personalities render one corporation the mere instrumentality of the other, and (2)
7 failure to disregard their separate entities would result in fraud or injustice. *Doe v.*
8 *Unocal Corp.*, 248 F.3d 915, 922 (9th Cir. 2001).

11 Similar to the “veil piercing” doctrine, the doctrine of “reverse veil piercing”
12 allows a human debtor’s creditor to collect on the debt from the debtor’s corporation.
13 “Reverse veil piercing is similar to traditional veil piercing in that when the ends of
14 justice so require, a court will disregard the separation between an individual and a
15 business entity.” *Curci Investments, LLC v. Baldwin*, 221 Cal. Rptr. 3d 847, 851 (Ct.
16 App. 2017). “But, the two serve unique purposes and are used in different contexts.
17 Rather than seeking to hold an individual responsible for the acts of an entity, reverse
18 veil piercing seeks to satisfy the debt of an individual through the assets of an entity of
19 which the individual is an insider.” *Id.* Although reverse veil piercing is different from
20 veil piercing, courts consider the same factors in deciding whether to apply the
21 doctrine: (1) whether the debtor and the corporation have a unity of interest, and (2)
22 whether declining to pierce the corporate veil would yield an inequitable result. *Id.* For
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1 example, when the debtor is the sole owner of a corporation and uses it as his or her
2 bank account, the debtor's creditor may be able to reverse-pierce the corporate veil. *Id.*

3 Here, Plaintiffs have plausibly alleged that the Alter Ego Defendants¹¹ are the
4 human Defendants' alter egos. In particular, Plaintiffs have plausibly alleged that the
5 Alter Ego Defendants were undercapitalized, had no distinct operations, and failed to
6 follow corporate formalities such as maintaining their own by-laws or accurate books
7 and records. (ECF 56 at ¶¶ 42-54). Because Defendants have not contradicted those
8 allegations with any evidence, the allegations alone are sufficient to overcome the
9 motion to dismiss. *LNS Enters.*, 22 F.4th at 858 (holding that a court must take as true
10 all uncontroverted allegations in the complaint).

14 Although presenting evidence is not necessary at this stage, Plaintiffs note that
15 they have also provided uncontradicted evidence that Alter Ego Defendants accepted
16 funds on behalf of "Wealth Assistants" and the human Defendants and had no
17 operations distinct from Wealth Assistants. (See Plaintiffs' Motion for Temporary
18 Restraining Order at 10-14). In particular:

- 21 • **HouTex Farm Equity Partners LLC (Max K. Day's alter ego)**
 - 22 ○ HouTex is a cricket farm according to its website. According to
 - 23 its corporate registration, it is managed by Max K. Day and has
 - 24 its corporate headquarters listed as Max K. Day's home.¹²

27 ¹¹ As noted above, the Alter Ego Defendants are MKD Investment Advisor, LLC; MKD Family Beneficiary, LLC;
28 MKD Family Private Management Company, LLC; Max Day Consulting, LLC; HouTex Farm Equity Partners LLC;
Business Financial Solutions Advisory, LLC; EvoMaxx, LLC; Dreams to Reality, LLC; and WWKB, LLC.

¹² Motion for TRO Exh. A, Ex. 10.

1 However, its phone line on its website does not seem to accept
2 calls.¹³ Because there is no evidence that it has real operations,
3 it is likely engaged in money laundering rather than cricket
4 farming.

5
6 • **MKD Investment Adviser (Max K. Day's alter ego);**

- 7 ○ MKD Investment Adviser appears to be Max K. Day's alter ego
8 not only because of its name but also because MKD Investment
9 Adviser is the registered owner of Max K. Day's home.¹⁴

10
11 • **MKD Family Beneficiary (Max K. Day's alter ego);**

- 12 ○ MKD Family Beneficiary appears to be Max K. Day's alter ego
13 not just because of the initials at the beginning of the corporate
14 name, but also because it has the same registered address as
15 MKD Investment Adviser.¹⁵

16
17 • **MKD Family Private Management Company (Max K. Day's alter
18 ego);**

- 19 ○ MKD Family Beneficiary appears to be Max K. Day's alter ego
20 not just because of the initials at the beginning of the corporate
21 name, but also because it has the same registered address as
22 MKD Investment Adviser.¹⁶

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27 ¹³ Motion for TRO Exh. A, Ex. 12, 17.

28 ¹⁴ Motion for TRO Exh. A, Ex. 14.

¹⁵ Motion for TRO Exh. A, Ex. 26.

¹⁶ Motion for TRO Exh A, Ex. 13.

1 • **Max Day Consulting (Max K. Day’s alter ego)**

- 2 ○ Max Day Consulting appears to be Max K. Day’s alter ego not
3 only because of its name but also because its address is also
4 Precision Trading Group, LLC’s address.¹⁷

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6 • **Business Financial Solutions Advisory LLC (Max K. Day’s alter
7 ego)**

- 8 ○ Business Financial Solutions Advisory LLC appears to be Max
9 K. Day’s alter ego because it is managed by Max K. Day and
10 has the same corporate address as Max K. Day’s home address.¹⁸

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13 • **Evo Maxx LLC (Max K. Day’s alter ego)**

- 14 ○ Max Day is the manager of this corporation. The attorney of
15 record is Feras Mousilli, who is the principal of the law firm that
16 is the attorney of record on many of the entity defendants’
17 corporate registrations. The address is the same as WA Amazon
18 Seller LLC’s address.¹⁹

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21 • **WWKB LLC (Michael Day’s alter ego)**

- 22 ○ WWKB is owned by Defendant Michael Day, and WWKB is an
23 owner of Wealth Assistants.²⁰ Plaintiffs allege that WWKB
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27 ¹⁷ Motion for TRO Exh. A, Ex. 11.

28 ¹⁸ Motion for TRO Exh. A, Ex. 8.

¹⁹ Motion for TRO Exh. A, Ex. 9.

²⁰ *Wealth Assistants v. Thread Bank*, No. 4:24-cv-00040, ECF 13 (S.D. Tex. 2024).

1 served no purpose other than helping Michael Day conceal the
2 proceeds of the fraudulent scheme. (ECF 56, ¶¶ 50-54).

3 • **Dreams to Reality LLC (Ryan Carroll's alter ego)**

- 4
- 5 ○ Dreams to Reality LLC was an owner of Wealth Assistants and
6 was owned by Ryan Carroll. Plaintiffs allege that it served no
7 purpose other than helping Ryan Carroll conceal the proceeds of
8 the fraudulent scheme. (ECF 56, ¶¶ 49, 51-54).
- 9

10 It would be unjust to allow Defendants to continue to abuse corporate privileges
11 by hiding assets in their alter egos, which may deprive Plaintiffs of any opportunity to
12 obtain meaningful final relief. In this situation, it is appropriate to disregard any
13 distinction between the Human Defendants and the fictitious corporations they have
14 formed. *See Sheard*, 40 Cal.App.3d at 210.

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17 **B. Defendants' Motion To Dismiss For Failure To State A Claim Fails**

18 **i. A 12(b)(6) Motion Must Be Denied Unless Plaintiffs' Allegations**
19 **Fail To Plausibly Allege A Cause Of Action**

20 A motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6), for failure to state a
21 claim, is only granted if the complaint fails to allege enough facts to state a claim to
22 relief that is plausible on its face. *Fayer v. Vaughn*, 649 F.3d 1061, 1064 (9th Cir.
23 2011). A claim has facial plausibility when the plaintiff pleads factual content that
24 allows the court to draw the reasonable inference that the defendant is liable for the
25 misconduct alleged. *Id.* Although the plausibility standard asks for more than a sheer
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1 possibility that a defendant has acted unlawfully, it is not akin to a probability
2 requirement. *Id.*

3 Furthermore, although a court may ignore conclusory allegations of law and
4 unwarranted inferences, a court must accept factual allegations in the complaint as true
5 and construe the pleadings in the light most favorable to the non-moving party. *Id.*

7 **ii. Jurisdictional Defendants’ Motion To Dismiss Plaintiffs’ Fraud**
8 **Claims Is Frivolous**

9 Plaintiffs have brought a cause of action against Defendants for conspiring to
10 defraud Plaintiffs and conceal their assets. To show the existence of a conspiracy,
11 Plaintiffs must show the existence of “an agreement . . . No formal agreement between
12 the parties is essential to the formation of the conspiracy, for the agreement may be
13 shown if there be concert of action, all the parties working together understandingly,
14 with a single design for the accomplishment of a common purpose.” *Wood v.*
15 *Greenberry Fin. Servs., Inc.*, 907 F. Supp. 2d 1165, 1181 (D. Haw. 2012) (quoting
16 *Marino v. United States*, 91 F.2d 691, 694 (9th Cir.1937)).

17 Moreover, common law fraud consists of five elements: (1) misrepresentation;
18 (2) knowledge of falsity; (3) intent to defraud or induce reliance; (4) justifiable reliance;
19 and (5) resulting damage. Cal. Civ. Code § 1709; *see Philipson Simon v. Gulsuig*, 154
20 Cal. App. 4th 347, 363 (2007). “Statements relating to predictions or forecasts of future
21 activity may be material misrepresentations if the prediction did not have a reasonable
22 factual basis.” *In re 3Com Securities Litigation*, 761 F. Supp. 1411, 1416 (N.D. Cal.
23 1990).

1 Defendants' motion to dismiss Plaintiffs' fraud-conspiracy claims (Motion at ¶
2 40-48) is almost identical to a section in their Opposition to a Preliminary Injunction.
3 (ECF 13 at 12-16). With respect to the Jurisdictional Defendants,²¹ the Court has
4 already rejected Defendants' arguments, finding that Plaintiffs not only have properly
5 alleged those claims but have established a likelihood of success on their merits. (ECF
6 49).²²
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9 To briefly recap the already rejected arguments, Defendants argued that
10 Plaintiffs' claims related to fraud must be dismissed because Plaintiffs "fail to identify
11 a single misrepresentation of material fact." (Motion at ¶ 40). That is not true. Plaintiffs
12 have alleged that the Jurisdictional Defendants made false statements about the
13 profitability of stores and sent fraudulent invoices to Plaintiffs, for example. (ECF 56
14 at ¶ 14). Moreover, Plaintiffs allege with particularity the fraudulent statements made
15 to them regarding the profitability of Wealth Assistants' stores, identifying who made
16 the statement, when they made it, and by what means they were made. (ECF 56 at ¶¶
17 80-100). Perhaps most importantly, Defendants omitted to tell Plaintiffs that the
18 business opportunities Defendants were selling were a fraudulent scheme; the Amazon
19 stores Defendants were selling Plaintiffs had no reasonable expectations of profits and,
20 in many cases, did not exist. Those misrepresentations and omissions are more than
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28 ²¹ Jurisdictional Defendants are Yax Ecommerce LLC, and each of the human Defendants.

²² Plaintiffs incorporate by reference the pertinent section of their Reply to Defendants' Opposition to the Preliminary Injunction. (ECF 37 at 14-15).

1 sufficient to sustain Plaintiffs' causes of action for fraud against Wealth Assistants. *See*
2 *In re 3Com*, 761 F. Supp. at 1416.

3
4 **iii. Plaintiffs Have Adequately Alleged That Non-Jurisdictional**
5 **Defendants Participated In The Fraud Conspiracy By Concealing**
6 **Assets**

7 When a person has engaged in a fraud conspiracy, helping that person conceal
8 their assets constitutes participation in the conspiracy. *Taylor v. S M Lamp Co.*, 190
9 Cal.App.2d 700, 706 (Cal. Ct. App. 1961) ("a debtor and those who conspire with him
10 to conceal his assets for the purpose of defrauding creditors are guilty of committing a
11 tort and each is liable in damages.").

13 In the Motion, Defendants define the term "Additional Defendants" as all
14 Defendants other than the Jurisdictional Defendants.²³ Defendants assert that "the
15 allegations with respect to the 'Additional Defendants' consist solely of the fact that
16 one Defendant Max K. Day, bears some relationship to the other entities (whether it be
17 by virtue of some level of ownership, management, a simple shared address for service
18 of process, or even just similarly sounding initials)." (Motion at ¶ 38). That is false.
19 Plaintiffs have adequately alleged causes of action against all "Additional Defendants,"
20 including by alleging that they have participated in the Jurisdictional Defendants'
21 conspiracy by helping them conceal assets; indeed, Plaintiffs allege that the Additional
22 Defendants had no purpose *but* to conceal assets. (ECF 56 at ¶¶ 39, 54, 167(f)).

23 Specifically, the Additional Defendants are the Alter Ego Defendants and all of the Wealth Assistants Entity
24 Defendants except Yax Ecommerce LLC.

Moreover, as discussed above, the Alter Ego Defendants are alter egos of the Human Defendants, and the Wealth Assistants Entity Defendants are each others' alter egos. Accordingly, even if those Defendants did not directly participate in the conspiracy, they would still be liable because they are alter-egos of those who did participate in the conspiracy.

iv. Plaintiffs Have Adequately Alleged Their Fraudulent Transfer Claims Against The Alter Ego Defendants

Plaintiffs' third cause of action is that the Alter Ego Defendants received fraudulently transferred assets. To succeed in an *actual* fraudulent transfer claim, a plaintiff must show: (1) he or she had a right to payment from a debtor who transferred money to the defendant, and (2) the debtor transferred property with the intent to hinder, delay or defraud plaintiff. Cal. Civ. Code § 3439.04 (hereinafter, "CUFTA").

However, a plaintiff can also bring a *constructive* fraudulent transfer claim under CUFTA. A Plaintiff can succeed on a constructive fraudulent claim, without showing any fraudulent intent, by showing that: (1) he or she had a right to payment from a debtor who transferred money to the defendant, (2) the debtor did not receive a reasonably equivalent value in exchange for the transfer or obligation, and (3) the debtor reasonably should have believed that she was insolvent. *Id.*; *Screen Capital Int'l Corp. v. Library Assset Acquisition Co.*, 510 B.R. 266, 273-74 (C.D. Cal. 2015).

As Defendants note, under Fed R. Civ. P. 9(b), claims sounding in fraud must allege "with particularity the circumstances constituting the fraud or mistake." However, Rule 9(b)'s heightened pleading standards are not generally applied to claims

1 of *constructively* fraudulent transfers because, despite the name of those claims, they
2 do not sound in fraud because they do not require proof of intent. *Screen Capital*, 510
3 B.R. at 274.

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5 Here, Plaintiffs have adequately alleged each of the elements of a constructive
6 fraudulent transfer claim.²⁴ (ECF 56 at p. 53-54). In particular, Plaintiffs alleged non-
7 conclusory facts from which one could plausibly infer that the Alter Ego Defendants²⁵
8 received constructively fraudulent transfers from the Wealth Assistants Entity
9 Defendants and the human Defendants. For example, Plaintiffs have alleged that the
10 Alter Ego Defendants had no purpose other than to help Wealth Assistants and the
11 human Defendants conceal assets, they had no operations, and they did not follow
12 corporate formalities such as maintaining their own by-laws or accurate books and
13 records. (ECF 56, ¶¶ 51-54, 166(d-g), 167(f), 168(d), 169)).

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17 **v. Defendants’ Parol-Evidence Argument Is Misplaced**

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19 The Jurisdictional Defendants argue that evidence of Jurisdictional Defendants’
20 misrepresentations outside the written contract are prohibited by the parol evidence
21 rule. (Motion at ¶ 51). That argument merits no discussion because it is simply not true;
22 the parol evidence rule does not prohibit parties from introducing evidence of
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26 ²⁴ Defendants assert that Plaintiffs did not adequately allege fraudulent transfer claims. But Plaintiffs do, in fact, allege that “the non-Recipient Defendants transferred assets to the Recipient Defendants when the non-Recipient Defendants knew that they were insolvent.” (ECF 56 at p. 53-54).

27 ²⁵ The “Alter Ego Defendants” are MKD Investment Advisor, LLC; MKD Family Beneficiary, LLC; MKD Family
28 Private Management Company, LLC; Max Day Consulting, LLC; Houtex Farm Equity Partners LLC; Business Financial Solutions Advisory LLC; Evo Maxx LLC; WWKB LLC; and Dreams To Reality LLC.

1 misrepresentations to prove a fraud or unfair competition claim. *Young v. Nationwide*
2 *Life Ins. Co.*, 2 F. Supp. 2d 914, 929 (S.D. Tex. 1998) (“because Plaintiffs here allege
3 fraud, the parol evidence rule does not apply.”).

4
5 **C. If The Court Is Inclined To Dismiss Any Of Plaintiffs’ Claims, Plaintiffs**
6 **Should First Be Allowed Leave To Amend**

7 If the Court were inclined to find that it does not have personal jurisdiction over
8 any Defendants, or that Plaintiffs have failed to adequately plead any of their claims,
9 Plaintiffs would respectfully request leave to amend to address any deficiencies in the
10 pleadings. *Swartz v. KPMG LLP*, 476 F.3d 756, 758 (9th Cir. 2007) (“although the
11 original complaint failed to allege sufficient jurisdictional facts, Swartz should have
12 been given an opportunity to cure this defect through amendment.”); *Tiedemann v.*
13 *Blanckensee*, 72 F.4th 1001, 1011 (9th Cir. 2023) (holding that before dismissing a
14 claim for failure to state a claim, “[l]eave to amend should be granted if it appears at
15 all possible that the plaintiff can correct the defect.”) (internal quotations omitted).

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19 **CONCLUSION**

20 For the reasons discussed above, Plaintiffs respectfully request that the Court
21 deny Defendants’ motion to dismiss in its entirety. If the Court is inclined to grant any
22 part of Defendants’ Motion, Plaintiffs respectfully request leave to amend.

23
24 Dated: November 14, 2024

25 /s/Nico Banks
26 Nico Banks, Esq.
27 Banks Law Office
28 Bar No. 344705
Tel.: 971-678-0036

nico@bankslawoffice.com
712 H St NE,
Unit #8571,
Washington, DC 20002

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WORD COUNT COMPLIANCE CERTIFICATION

The undersigned, counsel of record for Plaintiffs, certifies that this brief contains fewer than 7,000 words, which complies with the word limit of L.R. 11-6.1

/s/Nico Banks

Nico Banks

Dated: November 14, 2024

CERTIFICATE OF SERVICE

On November 14, 2024, I served this brief and accompanying papers via first-class mail to the parties listed below with addresses below their names, and via email to the parties with email addresses below their names:

JARED DAY;
19710 Chara Ct,
Cypress, TX 77433

MATTHEW CROUCH;
9566 Greiner Rd,
Clarence, NY 14031

CHRISTINE CARROLL;
11298 Snow View Ct,
Yucaipa, CA 92399

TRAVIS MARKER; THE LAW OFFICE OF TRAVIS R. MARKER, A
PROFESSIONAL CORPORATION (D.B.A. "MARKER LAW AND
MEDIATION"); & PARLAY LAW GROUP A PROFESSIONAL
CORPORATION
333 2nd St.
Suite 16,
Ogden, UT 84404

REYHAN PASINLI & TOTAL-APPS, INC.
26800 Aliso Viejo Pkwy
Ste 130,
Aliso Viejo, Ca 92656

TROY MARCHAND & QUANTUM ECOMMERCE
Via email to their attorney Marc Reich at mgr@reichradcliffe.com

1 BONNIE NICHOLS & WHOLESALE UNIVERSE;
2 Via email to their attorney Brad Geyer at bradford.geyer@formerfedsgroup.com

3 WELLS FARGO N.A.
4 Via email to its attorney Anthony Le at ALe@mcguirewoods.com

5
6
7
8 I declare under penalty of perjury under the laws of the State of California that the
9 foregoing statements in this Certificate of Service are true and correct.

10 /s/Nico Banks

11 Nico Banks

12 Dated: November 14, 2024
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